

Application No. 08/873484
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Amendment
Attorney Docket No. S63.2f-6925-US02

Remarks

This Amendment is in response to the Office Action dated **June 11, 1998**.

In the Office Action the Examiner rejected claims 1-23 pursuant to the judicially created doctrine of obviousness-type double patenting in view of commonly owned U.S. Patent No. 5,702,418. Applicant has enclosed herein a Terminal Disclaimer related to U.S. Patent No. 5,702,418. Applicant believes that the enclosed Terminal Disclaimer is in full compliance with 37 C.F.R. §1.321(c). Applicant respectfully requests the Examiner reconsider and withdraw the non-statutory double patenting rejection herein.

The Examiner next objected to the drawings pursuant to 37 C.F.R. §1.83(a) asserting the absence of the "mechanical expandable means" and "balloon". Applicant has cancelled without prejudice all claims containing these elements. Applicant respectfully requests reconsideration and withdrawal of the objection to the drawings pursuant to 37 C.F.R. §1.83(a). Applicant intends to pursue the subject matter of cancelled claims within a divisional or continuation application. Applicant is making the amendment herein in order to expedite prosecution of this matter.

The Examiner next rejected claims 1-4, 6, 8, 12-15, 20, and 22, alleging 35 U.S.C. §102(e) in view of Pinchuk U.S. Patent No. 5,700,269.

With respect to 35 U.S.C. §102, the Federal Circuit has held that prior art is anticipatory only if every element of the claimed invention is disclosed in a single item of prior art in the form literally defined in the claim. *Jamesbury Corp. v. Litton Indus. Products*, 756 F.2d 1556, 225 U.S.P.Q. 253 (Fed. Cir. 1985); *Atlas Power Co. v. E.I. DuPont DeNemours*, 750 F.2d 1569, 24 U.S.P.Q. 409 (Fed. Cir. 1984); *American Hospital Supply v. Travenol Labs.*, 745 F.2d 1, 223 U.S.P.Q. 577 (Fed. Cir. 1984).

The Pinchuk '269 patent does not disclose a deployment means including at least two rings. Therefore, the rejection of claims as amended herein is improper pursuant to 35 U.S.C. §102. Applicant respectfully requests reconsideration and withdrawal of the rejection of claims as amended herein.

Applicant has amended claims herein without prejudice. Applicant specifically traverses that a "ring" is the same element as a "retractor bulb" as has been asserted by the Examiner in the Office Action of June 11, 1998. Applicant intends to pursue the scope of the

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original claims within a divisional/continuation application. Applicant therefore preserves this argument for consideration within a later application. Applicant is making the Amendment herein in order to expedite prosecution of this application.

The Examiner next rejected claims 5, 6, and 11, pursuant to 35 U.S.C. §112 related to the absence of an antecedent basis for the term "balloon". The element of a "balloon" has never been claimed within claims 5, 6, and/or 11. The reference to the element of the "balloon" has occurred within claim 21 as cancelled herein. Applicant believes that the amendments to the claims herein resolve any asserted rejection pursuant to 35 U.S.C. §112. Applicant respectfully requests reconsideration and withdrawal of the rejected claims herein.

Claims 1-9, 11-17, 20 and 22, remain in this application.

For the above-identified reasons, Applicant respectfully requests reconsideration and allowance of claims as amended herein.

Should the Examiner have any questions concerning the enclosed amendment and remarks, the Examiner is cordially invited to contact the undersigned by telephone, facsimile, and/or E-Mail at the below identified addresses.

FORMALITIES

If an extension of time is required to make this response timely and no separate petition is enclosed, Applicant hereby petitions for an extension of time sufficient to make the response timely. In the event that this response requires the payment of government fees and payment is not enclosed, please charge Deposit Account No. 22-0350.

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CONCLUSION

In view of the foregoing, it is believed that the present application is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: June 21, 2005

By: _____


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